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10/681,480	10/08/2003	Todd M. Bjork	M81.12-0065	7467

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EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/681,480

Applicant(s)

BJORK ET AL.

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 6, 14 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 7-13, 15-20 and 23-31 is/are rejected.
- 7) ☒ Claim(s) 3, 4 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/5/2005; 1/12/2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Species I (Figure 2) in the reply filed on April 8, 2005 is acknowledged. Accordingly, claims 6, 14 and 21 are withdrawn from consideration as they read on a nonelected species.

### ***Specification***

The disclosure is objected to because of the following informalities. On page 1, line 27, "5,7921,046" is not a valid patent number.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 10-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10, "the shaft" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects

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for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gauthier (US 3,965,890).

Gauthier discloses a surgical clamp having a first clamping member M with a bore, a support member A' received in a bore of member M, a pawl 13 pivotally coupled to member M and cooperating with grooves 12 on support member A' (Figs. 3, 9 and 14-16, col. 4, lines 1-68 and col. 5, lines 1-39).

Claims 1-2, 7, 16-19 and 23-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Winquist et al. (US 6,613,049).

Winqvist et al. disclose a clamping assembly (60 or 90) including first and second clamping members (64 or 90) with clamping bores or sockets and friction means or "a plurality of raised portions" in the bore to retain a rod (31 or 61) in a set position, a shaft 70 and an actuating mechanism 76 (Figs. 9 and 12, col. 9, lines 19-28, col. 10, lines 23-67 and col. 11, lines 1-58).

Regarding claim 27, Winquist et al. disclose a stop or "pin" 97 between the first and second legs (col. 11, lines 38-58).

Claims 1, 5 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Phillips (US 6,736,775).

Phillips discloses a clamping assembly or surgical joint 10 including a first clamping member 45 with a bore 58, a second clamping member with a socket 106, a shaft 19 and an actuating mechanism 15 wherein the second clamping member has a clamping arm 100 pivotally attached to main body 90 (Fig. 2, col. 2, lines 45-67, col. 3, lines 1-67 and col. 4, lines 1-39).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips (US 6,736,775), as applied to claim 1, further in view of Roussouly et al. (US 5,810,817).

Phillips discloses all elements of the claimed invention except for a plurality of raised portions extending into the clamping bore. See previous discussion of Phillips.

Roussouly et al. teach providing non-slip projections such as radial ribs 27 on the bearing surfaces of a clamping part opposing rotation of the clamping part around a fastening rod (Figs. 7, 10, 13 and 16, col. 2, lines 52-65 and col. 5, lines 63-67).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided non-slip projections, taught by Roussouly et al., on the gripping or bearing surfaces (58, 61 and 106) of the Phillips clamping members to prevent rotation of rods held by the jaws of the clamping members.

### ***Allowable Subject Matter***

Claims 3-4 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anu Ramana*  
May 30, 2005

*Kevin Shaver*  
KEVIN SHAVER  
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